

REMARKS

This responds to the Office Action mailed on October 6, 2005, and the references cited therewith.

Claims 1, 19, and 27 are amended; as a result, claims 1-39 are now pending in this application.

§103 Rejection of the Claims

Claims 1-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee et al. (U.S. Publication No. 2002/0099649 A1) in view of Cook (U.S. 6,853,987) and Findley (U.S. 6,108,642). It is of course fundamental that in order to sustain an obviousness rejection that each and every element or step in the rejected claim must be taught or suggested in the proposed combination of references.

Fundamentally, the cited references are distinguishable in one very substantial manner. That is, none of the references, alone or in combination with one another, include an automated payment facilitator that processes in the manner that is positively recited in the amended independent claims. Specifically, in the Lee reference fraud is resolved at the merchant site and its scoring system or fraud system is not also capable of debiting and directly interacting with financial institutions; that is handled through conventional mechanisms. In Cook, the authorization system is incapable of crediting accounts and cannot debit an account at a financial institution. Both Lee and Cook rely on fraud detection at the merchant site and conventional financial processing mechanisms. In Findley, there is no discussion of crediting and debiting accounts within the specification other than what appears in the background. Also in Findley, previous purchase information is used to potentially block new purchases.

None of these references provide an automated payment facilitator that can both perform fraud analysis and can also debit and credit accounts by directly interacting with financial institutions. In addition, none of these references provide a mechanism for interacting with a sale facilitator to acquire information that assist in the fraud determination. These are substantial distinctions because all of the references are relying on conventional credit card payment mechanisms to finalize a transaction. In fact, the Examiner has cited the background of Findley, which does nothing more than regurgitate a conventional payment mechanism. One discussion

of Findley elaborates on a manual credit card payment process, which is unlike Applicants payment facilitator because, for one thing, it is a manual process. The other discussion elaborates on processors, which are located at the merchant site and which is the typical credit card swipe boxes and processing. This one is different in a number of manners as well but primarily because that credit card swipe box has no ability to detect fraud, for that it relies on other processes associated with the financial institutions with which it may interact and for another it also processes and is located at the merchant site.

In addition to these obvious distinctions, none of these proposed references when combined have any entity that can interact with a sale facilitator to acquire additional information that may be useful in the fraud analysis. Applicants' amended independent claims now positively recite such a limitation.

So, there are numerous missing steps and elements from the proposed combination; these missing limitations include, 1) no teaching where the same entity that detects fraud also directly interacts with a financial institution and is capable of crediting and debiting accounts to consummate a transaction between a buyer and seller, and 2) no teaching where the same entity interacts with a sale facilitator to also acquire additional information that is helpful in the fraud analysis determination.

Applicants respectfully believe that the Examiner is viewing the present invention in view of conventional paradigms where a merchant at a brick and mortar location or at a merchant website transacts with a buyer and tries to determine fraud and then completes a transaction. Applicants' invention is one in which merchants and sellers interact with one another through intermediaries such as the payment facilitator and the sale facilitator. An example of this different paradigm may be viewed through the interactions of PayPal® and Ebay®; neither of these two services are per se traditional merchants or per se traditional financial institutions but the interactions of the two services permit buyers, sellers, merchants, and financial institutions to quickly interact and conduct commerce with one another. The marketplace has demonstrated the success of these services and their popularity, which is readily apparent, and the interactions are not like the references cited and not like conventional mechanisms.

Accordingly, Applicants respectfully assert that the references in combination fail to teach each and every limitation recited in the amended independent claims and therefore cannot

be said to render the claims obvious. Applicants respectfully request that in view of the remarks and amendments presented above that the rejections be withdrawn and the claims allowed.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicants' attorney at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JASON MAY ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(513) 942-0224

Date 1-06-06

By Joseph P. Mehrle
Joseph P. Mehrle
Reg. No. 45,535

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 6 day of January, 2006.

Peter R. Reardon

Name

Peter R. Reardon
Signature